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No. 01-1417

In the Supreme Court of the United States

SALVATORE J. PRESUTTI, PETITIONER

v.

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR THE BANK OF HARTFORD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FEDERAL DEPOSIT INSURANCE CORPORATION IN OPPOSITION

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QUESTION PRESENTED

Whether a district court clerk's entry of judgment on a jury verdict precluded the court from granting a motion for judgment as a matter of law, where the motion was renewed after the verdict was announced and before the clerk entered the judgment and where the judgment entered by the clerk was not approved by the court and made no reference to the pending motion.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-7a) is unpublished, but the decision is available at 24 Fed. Appx. 92. The orders and amended judgment of the district court (Pet. App. 8a, 9a-10a, 11a-12a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 20, 2001 (Pet. App. 1a). The petition for a writ of certiorari was filed on March 20, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1993, petitioner sued the Bank of Hartford in Connecticut Superior Court, alleging various violations of Connecticut law. Pet. App. 3a. The Bank later failed, and the Federal Deposit Insurance Corporation (FDIC) was substituted for the Bank in its capacity as receiver. *Ibid.* The FDIC removed the case to the United States District Court for the District of Connecticut. *Id.* at 2a-3a.

A jury trial was held between May 30 and June 6, 2000. Pet. App. 3a. At the close of petitioner's case, the FDIC moved for judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50. *Ibid.* The court reserved decision, and submitted the case to the jury. *Ibid.* On June 6, 2000, the jury returned a verdict in favor of petitioner and awarded damages of $1129. *Ibid.*

Immediately after the verdict, the FDIC orally renewed its motion for judgment as a matter of law. Pet. App. 3a. The district court granted the FDIC permission to file its memorandum of law at a later date. *Ibid.* On June 19, 2000, the FDIC filed a written motion for judgment as a matter of law that was supported by a memorandum of law. *Ibid.* On June 20, petitioner asked for and received an extension of time in which to reply to the FDIC's motion. *Ibid.*

On June 22, 2000—two days later—a deputy district court clerk signed an order rendering judgment in favor of petitioner. Pet. App. 13a; see Fed. R. Civ. P. 58(1) (stating that the clerk "shall * * * enter the judgment without awaiting any direction by the court" after "a general verdict of a jury"). The order made no reference to the FDIC's pending motion for judgment as a matter of law. Pet. App. 13a.

On July 5, 2000, petitioner filed a motion seeking counsel fees and costs. Pet. App. 3a. On July 25, the FDIC requested that its time to respond be extended to 20 days after the court's decision on its pending motion for judgment as a matter of law. *Ibid.* The district court granted the FDIC's motion before receiving petitioner's response, which asserted that the court had already disposed of the Rule 50 motion by rendering judgment in his favor. *Id.* at 3a-4a.

On January 3, 2001, the district court granted the FDIC's motion for judgment as a matter of law, vacated the judgment in favor of petitioner, and directed the clerk to enter judgment in favor of the FDIC. Pet. App. 11a-12a. The court also denied petitioner's motion for fees and costs. *Ibid.* On January 10, the clerk entered the order as directed by the court. *Id.* at 9a-10a.

Petitioner then filed a motion to amend the judgment pursuant to Federal Rule of Civil Procedure 59(e), arguing that the FDIC had not made its motion within the time required by Federal Rule of Civil Procedure 50 and that the court's actions could not be justified based on Federal Rule of Civil Procedure 60. Pet. App. 4a. Petitioner also argued that, on the merits, the FDIC had not been entitled to judgment as a matter of law. *Ibid.*

On January 22, 2001, the district court denied petitioner's motion. Pet. App. 8a. The court noted that the FDIC had "orally renewed its motion for judgment as a matter of law immediately following the jury verdict, and obtained permission to file subsequently its memorandum of law." *Ibid.* The court stated that it had "not rel[ied] on Rule 60" in granting the FDIC's motion. *Ibid.*

2. The court of appeals affirmed in an unpublished summary order. Pet. App. 1a-7a. The court first

rejected petitioner's "counter-intuitive" argument that the FDIC's renewed motion for judgment as a matter of law had been untimely because it had been made before the entry of judgment. *Id.* at 5a. The court noted that Federal Rule of Civil Procedure 50(b) provides that such motions must be made "no later than 10 days after entry of judgment," and quoted language from the Advisory Committee Notes stating that "[t]he phrase 'no later than' is used—rather than 'within'—to include post-judgment motions that sometimes are filed before actual entry of the judgment by the clerk." Pet. App. 5a (quoting Fed. R. Civ. P. 50 advisory committee's note (1995 amend.)). "Because the FDIC filed a written motion *before* the entry of judgment," the court of appeals reasoned, "its motion was timely." *Ibid.*

The court of appeals also rejected petitioner's contention "that entry of the June 22 judgment constituted a denial of the FDIC's earlier motion, requiring the FDIC to move against the judgment." Pet. App. 5a. It stressed that the district court "did not regard the June 22 judgment as resolving the Rule 50 motion," and stated that the record was barren of "any indication" that the district court approved the form of the verdict pursuant to Federal Rule of Civil Procedure 58(2). Pet. App. 5a. The court also observed that petitioner had not offered "any persuasive authority for his argument that the entry of judgment by a clerk disposes of a pending Rule 50 motion where it does not purport to address that motion." *Ibid.*

ARGUMENT

The unpublished decision of the court of appeals is correct, and does not conflict with the decisions of this Court or those of any other court of appeals. The un-

published decision correctly disposes of a claim that a district court clerk made a material error in entering judgment in the amount of $1129. Further review by this Court is not warranted.

1. The FDIC timely renewed its motion for judgment as a matter of law. Federal Rule of Civil Procedure 50(a)(1) states that a party may move for judgment as a matter of law after the opposing party "has been fully heard on an issue." The FDIC made such a motion at the close of petitioner's case, but the district court reserved decision and submitted the case to the jury. Pet. App. 3a. Rule 50(b) provides that a party that made a pre-verdict motion "may renew its request for judgment as a matter of law by filing a motion *no later than* 10 days after entry of judgment." Fed. R. Civ. P. 50(b) (emphasis added). Because the FDIC's renewed motion for judgment as a matter of law was made on June 6, 2000— *before* judgment was entered —it was timely under Rule 50(b). See Fed. R. Civ. P. 50 advisory committee's note (1995 amend.) ("The phrase 'no later than' is used —rather than 'within'—to include post-judgment motions that sometimes are filed before actual entry of the judgment by the clerk.").[1]

2. Petitioner is incorrect in arguing (Pet. 3) that the decision below conflicts with this Court's decision in *Johnson* v. *New York, New Hampshire & Hartford R.R.*, 344 U.S. 48 (1952). In *Johnson*, this Court held that a post-verdict motion for a new trial neither

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[1] Petitioner does not contend that the FDIC's renewed motion for judgment as a matter of law was not "filed" because it was made orally. See, *e.g.*, Pet. 1 ("On June 15, 2000 the FDIC renewed an earlier motion, asking for judgment notwithstanding the verdict."). Nor did he make such an argument before the court of appeals.

renewed a pre-verdict motion for a directed verdict, nor subsumed within it a motion for judgment notwithstanding the verdict. *Id.* at 54. Because the FDIC *did* make a post-verdict motion for judgment as a matter of law, *Johnson* is inapposite.[2]

3. Petitioner also errs in suggesting (Pet. 3-4) that this Court should grant review because the court of appeals' decision conflicts with previous decisions by the same court. Any intra-circuit conflict would, of course, be a matter for the Second Circuit to resolve. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam). But there is no conflict in any event. The cases cited by petitioner both involved motions for judgment as a matter of law that were filed more than ten days *after* judgment was entered. See *Weissman* v. *Dawn Joy Fashions, Inc.*, 214 F.3d 224, 228, 230 (2d Cir. 2000) (per curiam); *Fruit of the Loom, Inc.* v. *American Mktg. Enters., Inc.*, 192 F.3d 73, 74 (2d Cir. 1999) (per curiam). Those cases thus do not address the issue presented by this case: whether a motion filed *before* formal entry of judgment satisfies Rule 50(b).

4. Finally, petitioner is wrong in contending (Pet. 4-5) that the court of appeals' decision is inconsistent with the policy of finality that underlies Rule 50. Rule 50(b) provides that the district court litigation ends *unless* a party files a motion for judgment as a matter of law or a motion for a new trial no later than ten days after entry of judgment. Because the FDIC did so, there was no finality interest to preserve.

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[2] Moreover, Rule 50(b) has been substantively amended three times since *Johnson* was decided. See Fed. R. Civ. P. 50 advisory committee's notes (1963 amend., 1987 amend., 1995 amend.).

Petitioner erroneously suggests (Pet. 4) that he was entitled to rely on the "final[ity]" of the July 22, 2000 judgment that was mechanically entered by the clerk's office. See Fed. R. Civ. P. 58(1) (stating that the clerk "shall * * * enter the judgment without awaiting any direction by the court" after "a general verdict of a jury"). But, as the court of appeals recognized, that order could not have created any justifiable expectation of finality, both because it did not purport to resolve the FDIC's pending motion for judgment as a matter of law and because it was signed by a deputy clerk—a person who had no authority to resolve that motion. Pet. App. 5a.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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